

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MICHAEL PUNG, as the personal
representative of the ESTATE OF
TIMOTHY SCOTT PUNG,
Plaintiff,

Case No.: 18-cv-1334
Honorable Robert J. Jonker

MOTION

v.

PETER M. KOPKE, in his personal
capacity,
PATRICIA DEPRIEST, in her personal
capacity;
STEVEN W. PICKENS, in his official
and personal capacity, and
COUNTY OF ISABELLA
Defendants

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MOTION FOR LEAVE TO GIVE NOTICE OF SUPPLEMENTAL AUTHORITY

NOW COMES Plaintiff Michael Pung (PR), by counsel, and moves for leave to
provide supplemental authority in opposition to prior filings made against each
Defendants' motion to dismiss Count I of the Second Amended Complaint, a pled Section

1983 due process conspiracy claim. As part of legal research on a forthcoming federal case regarding the First Amendment in the Eastern District, Plaintiff's counsel became aware of new mandatory authority to which this Court is bound and should be made aware of. The case is *Novak v. City of Parma*, 932 F.3d 421 (6th Cir. 2019).

In *Novak*, the plaintiff created a Facebook page mocking the Parma Police Department. The police seemingly overacted and arrested the creator of the parody Facebook page. After being acquitted of some Ohio charges, he sued under Section 1983.

Relevant this case, the *Novak* plaintiff—like PR Pung—also pled a Section 1983 conspiracy claim. The Sixth Circuit confirmed what PR Pung has said all along—the pleading standard and the “test for conspiracy” are “simple.” Like Mr. Novak, PR Pung has named the alleged coconspirators, pled they came to an agreement, and alleges that they overtly acted against his legal interests. Poignantly, the Sixth Circuit, citing *Twombly*, held “these are ‘enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.’” *Novak*, 932 F.3d at 436.

If it is legal sufficient for Mr. Novak under the *Twombly* (i.e. Rule 12(b)(6) standard) according to the Sixth Circuit, it is certainly legal sufficient of PR Pung. And more importantly, this Court is bound by the decision. See *Bennett v. E.F. Hutton Co., Inc.*, 597 F. Supp. 1547, 1557 (N.D. Ohio 1984) (published Sixth Circuit decision binds district courts in Michigan, Ohio, Tennessee, and Kentucky).

BRIEF IN SUPPORT

Courts of the Western District of Michigan regularly and consistently allow, in its individualized discretion, leave to file supplemental authority which assists the Court with

resolving pending legal issues. E.g. *Hertel v. Mtg. Electronic Registration Sys*, Case No. 12-cv-174, 2013 U.S. Dist. LEXIS 63454, at fn.11 (WD Mich, May 3, 2013). Such discretion is asked to be exercised here.

CONCURRENCE

Concurrence was sought from all opposing counsel. Counsel for Defendants County of Isabella and Steven Pickens (Vander Laan) refused to concur and thereby necessitating this motion without the need to await the responses from remaining counsel.

RELIEF REQUESTED

WHEREFORE, the Court is requested to enter an order receiving *Novak v. City of Parma*, 932 F.3d 421 (6th Cir. 2019) as precedentially-binding supplemental authority

Date: December 26, 2019

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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CERTIFICATE OF SERVICE

I hereby certify that on date stated below, I filed the foregoing document with the ECF/CM system which will serve an email copy of the same to all counsel of record (at their email address of record) on the date stated below.

Date: December 26, 2019

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison

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